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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 377

ROCKWELL MANUFACTURING COMPANY,
KEARNEY DIVISION,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

PETITIONER'S SUPPLEMENTAL MEMORANDUM

On August 13, 1964, Petitioner filed its Petition for a Writ of Certiorari in this case. At that time Petitioner did not know that petitions for certiorari had previously been filed with, and were then pending before, the Court in two other cases which presented, among others, questions substantially similar to that presented in this case. These other cases are: *United Air Lines, Inc.* v. *National Mediation Board, Et Al.*, No. 139, October Term, 1964, and *National Mediation Board, Et. Al.* v. *Association for the Benefit of Non-Contract Employees*, No. 369, October Term, 1964. Because of the bearing of the latter cases on this case, Petitioner is submitting this Supplemental Memorandum.

Nos. 139 and 369 both involve an order of the National Mediation Board directing an election under the Rail-

way Labor Act. The employer, United Air Lines, and a group of United's employees, the latter calling themselves Association for the Benefit of Non-Contract Employees, objected to the election on the ground that the craft or class (unit) established by the Mediation Board was not appropriate. Both United and the Association requested a hearing on the unit matter. Neither, however, was granted such a hearing by the Mediation Board.

As phrased by United, the petitioner therein, No. 139 presents, *inter alia*, the question:

> Does a carrier have a constitutional due process right to be heard by the Mediation Board on the craft or class issue?

In the Memorandum submitted in No. 139 on behalf of the Mediation Board and its members, the Solicitor General has stated that he is not opposing United's petition for a writ of certiorari because of the importance of the questions presented therein.

No. 369 presents, *inter alia*, the related question of whether the Mediation Board could properly deny the Association's request for a hearing on the unit issue because the Association was not seeking to represent United's employees as a bargaining agent. With respect to this question, the Solicitor General, who is seeking the writ in No. 369, has stated in his Petition, page 12:

> While the wisdom and perhaps even the legality of the Board's practice of denying hearings on the craft or class to others than labor organizations seeking to be certified may be open to question . . . the issue can be authoritatively settled only by this Court.

The statutory provisions of the National Labor Relations Act with respect to the selection and certification of bargaining representatives are analogous to the provisions of the Railway Labor Act concerned with the same matters. The issue raised in the instant case, like those issues in Nos. 139 and 369 to which we have adverted,

concerns in its essence the right of an affected person, who raises substantial questions concerning a representation election, to a hearing before a valid certification of representatives can be made by the agency administering the pertinent statute.

Because of this essential sameness of issues in all three cases, because the right to be heard on issues arising out of the selection of a bargaining agent is of equal importance under both statutes and before either agency, and in view of the positions taken by the Solicitor General in Nos. 139 and 369, Petitioner respectfully submits that two basic propositions exist with respect to these cases: (1) should the Government elect to oppose the petition for certiorari in the instant case, it would be taking a position inconsistent with that currently being urged by the Solicitor General in Nos. 139 and 369; and (2) should this Court decide to issue writs of certiorari in Nos. 139 and 369, and thereby determine the right to a hearing of parties subject to the Railway Labor Act, the failure to issue a like writ in the instant case would leave undetermined the same right as it affects the much greater number of parties subject to the National Labor Relations Act.

Respectfully submitted,

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